

**WILSON, ELSE, MOSKOWITZ, EDELMAN & DICKER LLP**

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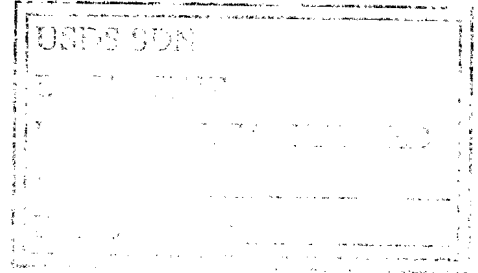
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July 12, 2012

**By First Class Mail**

Honorable Kenneth M. Karas  
United States District Judge  
United States Courthouse  
300 Quarropas Street  
White Plains, New York 10601



**Re:** Jeffrey Deskovic v. City of Peekskill, Putnam County, Westchester County, David Levine, Thomas McIntyre, Walter Brovanski, Eugene Turnolo, John and Jane Doe Supervisors, Daniel Stephens, Louis Roh, Millard Hyland, Peter Insero and Legal Aid Society of Westchester County, Docket No. 07 Civ. 8150 (KMK) (GAY)

Dear Judge Karas:

We are counsel for the City of Peekskill, David Levine and Thomas McIntyre in the referenced action. We are writing to request the Court's assistance in resolving a discovery dispute with counsel for plaintiff Jeffrey Deskovic.

The dispute concerns our request and Mr. Deskovic's refusal to provide authorizations to interview certain doctors, nurses, therapists and other physical and mental health care providers who treated, cared for or otherwise supervised Mr. Deskovic during 1990 during his stay at Westchester County Medical Center.

To be specific, Mr. Deskovic has agreed to provide authorizations that would allow us to interview former nurse Alyce Stephens and Dr. Louis Miller. He has refused, however, to provide any additional authorizations. We have specifically asked for authorizations that would allow us to interview: Dr. Steven Singer, Dr. Edward Herman, Dr. Stanley Rothman, Dr. Faiq A. Hammedi, Dr. Laurence Loeb, Dr. Betty Christianson, Dr. Mahling (first name unknown), Dr. Fried (first name unknown), Dr. Proctor (first name unknown), Dr. Goldstein (first name unknown), Dr. Mahling (first name unknown), Cindy Parsons, Kevin Williams, Mimi Augustus, Bertha Hill and James Harvest. We also seek authorizations from Carol Smith, Wanda Baggly, Earl Bray, Joan Johnson, Terry Struthers, Christopher Gonzalez and Bill Belville, nurses and psychiatric aides who had contact with Mr. Deskovic after he was re-admitted to the psychiatric wing at Westchester Medical Center in March 1990.

We believe we are entitled to these authorizations. First, on November 16, 2009, Magistrate Yanthis ordered that the "Westchester Medical Center is permitted and required to disclose information on all matters relating to the 1990 admission, legal status, care, and

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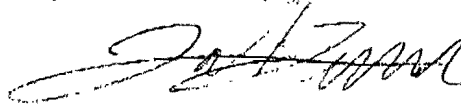
treatment of [Deskovic] at the Westchester Medical Center Psychiatric Institute." Docket Entry #244, at p.2. The order further requires Westchester Medical Center to "make available for deposition any personnel who was or may have been in contact with [Deskovic] during his stay there." *Id.* Second, Mr. Deskovic has put his psychological condition squarely at issue by virtue of his claims and the category of damages that he is seeking.

We have attempted to resolve this issue with Mr. Deskovic's counsel but have unfortunately reached an impasse. We therefore respectfully request Your Honor's assistance or, in the alternative, for a referral to Magistrate Yanthis.

Finally, we would like to follow on our letter dated May 9, 2012 (copy enclosed), submitted in response to the Court's Order dated April 23, 2012 (Docket Entry #469). We are specifically seeking production of a pre-sentence investigation report, a mental health report and an inmate status report concerning plaintiff Jeffrey Deskovic. These reports, and certain additional documentation was submitted for in camera review by Mr. Mausler of the New York State Department of Correctional Services. For the reasons set forth in our May 9, 2012 letter, we believe disclosure of this documentation is warranted.

Respectfully submitted,

WILSON, ELSE, MOSKOWITZ, EDELMAN & DICKER LLP



Lalit K. Loomba

Cc: (via -email):

All counsel of record

Two weeks after this  
opinion to the summary  
judgment motion is due.

Plaintiff is to respond to the  
first request (regarding medical authorizations)  
~~by July 20, 2012~~ Defendant is to provide  
these specific legal authority, in support of  
the second request (regarding the materials  
reviewed in camera).

So ordered.



7/13/12

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Honorable Kenneth M. Karas  
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**Re:** Jeffrey Deskovic v. City of Peekskill, Putnam County, Westchester County, David Levine, Thomas McIntyre, Walter Brovarski, Eugene Tumolo, John and Jane Doe Supervisors, Daniel Stephens, Louis Roh, Millard Hyland, Peter Insero and Legal Aid Society of Westchester County, Docket No. 07 Civ. 8150 (KMK) (GAY)

Dear Judge Karas:

We are counsel for the City of Peekskill, David Levine and Thomas McIntyre in the referenced action.

We are responding to the Court's Order dated April 23, 2012 (Docket Entry #469), which requests "a brief letter" explaining the Court's authority to release to defendant City of Peekskill materials provided to the Court by Craig Mausler, Esq., Assistant Counsel for the New York State Department of Corrections, specifically: a pre-sentence investigation report, a mental health report and an inmate status report concerning plaintiff Jeffrey Deskovic. Mr. Mausler provided these materials to the Court after having been served with a subpoena issued on behalf of the City of Peekskill in this action calling for the production of documents.

This letter was due on May 2, 2012. It was prepared to be sent by then, but was inadvertently not mailed out. I apologize for this error and any inconvenience to the Court and the parties that it may have caused.

**The Pre-Sentence Investigation Report**

A United States District Judge has broad discretion to rule upon the scope and availability of discovery. *Wood v. Federal Bureau of Investigation*, 432 F.3d 78, 84 (2d Cir. 2005). While pre-sentence investigation reports are privileged under Section 390.50 of the New York Criminal Procedure Law, "state laws of privilege do not govern discovery in federal cases." *Melendez v. Greiner*, 2003 U.S. Dist. LEXIS 19084, at \*15 (S.D.N.Y. Oct. 23, 2003). Moreover, the interest served by Section 390.50 is the privacy concerns of the criminal defendant to be sentenced, i.e., Mr. Deskovic. Here, Mr. Deskovic has consented to disclosure of his pre-sentence investigation

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report to counsel for the Peekskill Defendants. In fact, his attorneys have committed to attempting to locate the report and to turn it over if they are able to find it. For these reasons, the Peekskill Defendants respectfully submit that this Court has authority to release the pre-sentence investigation report.

Mental Health Report and Inmate Status Report

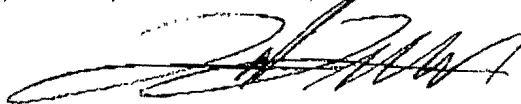
Mr. Deskovic has put in issue in this case both his mental health and the history of the years in which he was held in custody by the New York Department of Corrections. The mental health and inmate status reports prepared by the Department of Corrections are therefore relevant to Mr. Deskovic's claims and the Peekskill Defendants' defenses in this case. At the very least, these documents might lead to the discovery of admissible evidence. Given the broad scope of discovery under the Federal Rules of Civil Procedure, we believe these documents should be disclosed. We also note that Mr. Deskovic has not objected to the subpoena served on the Department of Corrections, and his attorneys have merely requested that we provide them with copies of whatever documents are produced in response to the subpoena.

\* \* \*

For the reasons set forth above, we respectfully submit that the materials submitted to the Court by the Department of Corrections for *in camera* review should be disclosed to the Peekskill Defendants. We will, of course, provide copies of whatever documents are released by the Court to Mr. Deskovic's attorneys.

Respectfully submitted,

**WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP**



Lalit K. Loomba

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 May 9, 2012  
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Cc: (via -email):

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